

THE HONORABLE ROBERT S. LASNIK

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CITY OF SEATTLE, a municipal
corporation, located in the County of King,
State of Washington,

Plaintiffs

v.

MONSANTO COMPANY, SOLUTIA INC.,
and PHARMACIA CORPORATION, and
DOES 1 through 100,

Defendants.

CASE NO. 2:16-cv-00107-RSL

**DEFENDANTS' MOTION TO STAY
BRIEFING ON PLAINTIFF'S MOTION TO
DISMISS**

NOTED ON MOTION CALENDAR:
May 19, 2017

File Date: January 25, 2016
Trial Date: April 2, 2018

I. INTRODUCTION

Defendants Monsanto Company, Solutia Inc., and Pharmacia LLC (collectively “Defendants”) respectfully submit this Motion to Stay Briefing on Plaintiff City of Seattle’s (“Plaintiff”) Motion to Dismiss Counterclaims (ECF No. 66), pursuant to Local Rules 7(j) and 7(d)(2)(A) and the Court’s inherent power to control its docket and calendar. As set forth in Defendants’ Answer and Counterclaims, ECF No. 63, Defendants will move to amend its Answer and Counterclaims to assert additional counterclaims once the applicable statutory notice periods expire. The notice periods expire on May 22, 2017, the same day that Defendants’ Opposition to Plaintiff’s Motion to Dismiss Counterclaims is due. Defendants understand that Plaintiff intends to file another Motion to Dismiss Defendants’ amended counterclaims, which will unnecessarily result in overlapping and duplicative briefing given the pendency of Plaintiff’s current Motion to Dismiss Defendants’ original counterclaims. Defendants respectfully submit that a stay of briefing on Plaintiff’s current Motion to Dismiss will conserve judicial resources and avoid unnecessary and costly duplication of the Parties’ efforts.

II. PROCEDURAL HISTORY

Plaintiff filed its initial Complaint in this case on January 25, 2016. ECF No. 1. Defendants filed a Motion to Dismiss on May 18, 2016, which was fully briefed by July 29, 2016. ECF No. 34; *see also* ECF Nos. 41 (Plaintiff’s Opposition to Defendants’ Motion to Dismiss), 43 (Defendants’ Reply in Support of Defendants’ Motion to Dismiss). After oral argument on Defendants’ Motion to Dismiss on February 8, 2017, the Court issued an Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss on February 22, 2017. ECF No. 60.

Defendants then filed their Answer and Counterclaims on March 24, 2017. ECF No. 63. Therein, Defendants explained that upon the expiration of the 60-day notice periods prescribed by both 33 U.S.C. § 1365(b)(1)(A) for Clean Water Act (“CWA”) claims and RCW 4.96.020(4) for Washington State law claims, Defendants would seek leave to amend their Answer and Counterclaims to assert their CWA and state law negligence, unjust enrichment, and contribution claims. ECF No. 63, ¶ 28. As described in the Counterclaims, Defendants provided notice of their CWA claims and state claims to the required parties on March 23, 2017. ECF No. 63, ¶¶ 26-27.

Defendants plan to file a Motion to Amend their Answer and Counterclaims to assert these additional claims on May 22, 2017, the first day after the expiration of the aforementioned 60-day notice periods.¹

On April 28, 2017, Plaintiff filed a Motion to Dismiss Defendants' Answer and Counterclaims. ECF No. 66. Defendants' Opposition to Plaintiff's Motion to Dismiss is due on May 22, 2017, the same day on which Defendants plan to file a Motion for Leave to Amend their Answer and Counterclaims to assert their CWA and state law negligence, unjust enrichment, and contribution claims. Plaintiff's reply brief is due on May 26, 2017, which is the noting date of Plaintiff's Motion to Dismiss.

III. LEGAL STANDARD

A federal district court possesses the inherent power to control its own docket and calendar, conserve judicial resources, and provide for a just determination of the cases before it. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”); *see also Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983). Courts have “broad discretion” in determining whether to exercise that authority. *Clinton v. Jones*, 520 U.S. 681, 706 (1997).

IV. RELIEF REQUESTED

A stay of briefing on Plaintiff's Motion to Dismiss will conserve the Court's and the Parties' resources and allow for a single set of briefing on a motion to dismiss Defendants' Amended Answer and Counterclaims. *See Birrane Harmon*, No. C13-1365-JCC, 2014 WL 12539365, at *1 (W.D. Wash. Feb. 3, 2014) (granting stay of briefing “to help the parties reduce the expense of attorneys’ fees where possible”). Plaintiff's currently filed Motion to Dismiss, ECF No. 66, addresses Defendants' Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) claims and affirmative defenses. Defendants' Amended Answer and Counterclaims

¹ Leave to add such claims is appropriate under Ninth Circuit precedent. *See, e.g., Caswell v. Calderon*, 363 F.3d 832, 839-40 (9th Cir. 2004) (reversing denial of request for leave to add new claims once they were exhausted as an abuse of discretion).

1 will include affirmative defenses and CERCLA claims, in addition to above-described CWA and
2 state law negligence, unjust enrichment, and contribution claims. Defendants anticipate that if the
3 Court grants leave for Defendants' Amended Answer and Counterclaims, Plaintiff will promptly file
4 an additional Motion to Dismiss, which will encompass not only arguments regarding Defendants'
5 CERCLA counterclaims and affirmative defenses, but also Defendants' CWA and state law claims.
6 Put simply, without relief, the Parties will proceed to brief two separate, albeit overlapping and
7 partially duplicative, motions to dismiss, and, most importantly, will burden the Court's resources
8 with these two overlapping motions, the first of which relates to counterclaims that will have been
9 superseded by later-filed amended counterclaims.

10 A grant of a stay of briefing on Plaintiff's Motion to Dismiss will spare the Court and the
11 Parties significant time, effort, and expense of engaging in two duplicative rounds of motion to
12 dismiss briefing. Moreover, a stay does not deprive the City of any of its rights under the Federal
13 Rules of Civil Procedure given the City's ability to file an additional motion to dismiss Defendants'
14 Amended Answer and Counterclaims. Additionally, a grant of a stay of briefing on Plaintiff's
15 Motion to Dismiss will not result in any delay in this matter given that Defendants will file their
16 Motion for Leave to Amend their Answer and Counterclaims in less than two weeks, on May 22,
17 2017.

18 Defendants submit that there is no reason to decide the issues presented in Plaintiff's pending
19 Motion to Dismiss on a piecemeal basis, prior to the filing of Defendants' Amended Answer and
20 Counterclaims. Rather, the Court's and the Parties' resources will be greatly conserved by ordering a
21 single round of briefing on Defendants' Amended Answer and Counterclaims, to be filed on May 22,
22 2017.

23 Defendants' counsel conferred with Plaintiff's counsel regarding the subject of this Motion
24 and sought agreement from Plaintiff's counsel to stay briefing on the City's Motion given
25 Defendants' soon-to-be-filed Motion for Leave to Amend Their Answer and Counterclaims.
26 Plaintiff's counsel conferred with its client and advised that the City would not agree to do so.

V. CONCLUSION

Defendants respectfully request that this Court stay briefing on Plaintiff's Motion, pending the Court's resolution of Defendants' Motion to Amend Answer and Counterclaims, to be filed May 22, 2017.

Dated: May 11, 2017

SCHWABE WILLIAMSON & WYATT

By: /s/ Jennifer L. Campbell

Jennifer L. Campbell, WSBA No. 31703
Connie Sue M. Martin, WSBA No. 26525
Claire Rootjes, WSBA No. 42178
1420 5th Avenue, Suite 3400
Seattle, WA 98101
Phone: (206) 622-1711
Email: jcampbell@schwabe.com
csmartin@schwabe.com
crootjes@schwabe.com

LATHAM & WATKINS LLP

Robert M. Howard, CSBA No. 145870
(Admitted *Pro Hac Vice*)
Kelly E. Richardson, CSBA No. 210511
(Admitted *Pro Hac Vice*)
Andrea M. Hogan, CSBA No. 238209
(Admitted *Pro Hac Vice*)
12670 High Bluff Drive
San Diego, California 92130
Phone: (858) 523-5400
Emails: robert.howard@lw.com
kelly.richardson@lw.com
andrea.hogan@lw.com

1 KING & SPALDING LLP
2 Donald F. Zimmer, CSBA No. 34371
(Admitted *Pro Hac Vice*)
3 Nicholas D. Kayhan, CSBA No. 129878
(Admitted *Pro Hac Vice*)
4 Megan Nishikawa, CSBA No. 271670
(Admitted *Pro Hac Vice*)
5 101 Second Street, Suite 2300
6 San Francisco, CA 94105
7 Phone: (415) 318-1200
8 Email: FZimmer@kslaw.com
NKayhan@kslaw.com
MNishikawa@kslaw.com

9
10 *Attorneys for Defendants Monsanto Company, Solutia Inc.,*
11 *and Pharmacia LLC*
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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Peter S. Holmes
peter.holmes@seattle.gov
Laura B. Wishik
laura.wishik@seattle.gov
Office of the City Attorney
City of Seattle
701 Fifth Avenue, Suite 2010
Seattle, WA 98104-7097
Tel: 206.684.8200

Attorneys for Plaintiff City of Seattle

Scott Summy, Esq.
ssummy@baronbudd.com
Carla Burke, Esq.
cburke@baronbudd.com
Celeste Evangelisti, Esq.
cevangelisti@baronbudd.com
Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219
Tel: 214.521.3605

Attorneys for Plaintiff City of Seattle

John H. Gomez, Esq.
john@thegomezfirm.com
John P. Fiske, Esq.
fiske@thegomezfirm.com
Gomez Trial Attorneys
655 West Broadway, Suite 1700
San Diego, CA 92101
Tel: 619.237.3490

Attorneys for Plaintiff City of Seattle